

**COPY**

**E-filing**

Damien Brower, SBN: 171119  
Office of the City Attorney  
CITY OF BRENTWOOD  
708 Third Street  
Brentwood, CA 94513  
Telephone: (925) 516-5440  
Facsimile: (925) 516-5441  
[dbrower@ci.brentwood.ca.us](mailto:dbrower@ci.brentwood.ca.us)

Rick W. Jarvis, SBN: 154479  
Benjamin P. Fay, SBN: 178856  
JARVIS, FAY & DOPORTO, LLP  
475 - 14<sup>th</sup> Street, Suite 260  
Oakland, CA 94612  
Telephone: (510) 238-1400  
Facsimile: (510) 238-1404  
[rjarvis@jarvisfay.com](mailto:rjarvis@jarvisfay.com)  
[bfay@jarvisfay.com](mailto:bfay@jarvisfay.com)

Attorneys for Respondent and Defendant  
CITY OF BRENTWOOD

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

D. BAILEY NEFF, MINNESOTA  
RENTALS, INC.,

Petitioners and Plaintiffs,

v.

CITY OF BRENTWOOD, and DOES I-XX,

Respondents and Defendants.

CASE NO:

**C07-02907**

**NOTICE OF REMOVAL OF ACTION;  
UNDER 28 U.S.C. SECTION 1441(b)  
[FEDERAL QUESTION]**

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE THAT respondent and defendant City of Brentwood hereby  
removes to this Court the state court action described below.

1. On May 7, 2007, an action was commenced in the Superior Court of the State of  
California in and for the County of Contra Costa, entitled *D. Bailey Neff, Minnesota Rentals, Inc.*  
*v. City of Brentwood*, as case number C 07-00964. The Verified Petition for Writ of Mandate;

ORIGINAL  
FILED  
JUN - 5 2007  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

ADR

MEJ

1 Complaint for Inverse Condemnation is attached hereto as Exhibit "A."

2 2. The date upon which defendant City of Brentwood received a copy of said complaint  
3 was May 7, 2007, when defendant was served with a copy of the summons and complaint which  
4 was filed in the County of Contra Costa. A copy of the summons is attached hereto as Exhibit  
5 "B".

6 3. This action is a civil action of which this Court has original jurisdiction under 28  
7 U.S.C. section 1331, and is one which may be removed to this Court by defendant pursuant to the  
8 provisions of 28 U.S.C. section 1441(b) in that the Fourth Cause of Action arises under the Fifth  
9 and Fourteenth Amendments of the United States Constitution, asserting a taking of the plaintiffs'  
10 property without just compensation and a violation of the plaintiffs' right to equal protection of the  
11 laws. The remaining causes of action are not by themselves removable, in that they do not allege  
12 any claims which arise under federal law, but because the Fourth Cause of Action is separate and  
13 independent from the remaining causes of action this entire case is thus removable under 28  
14 U.S.C. section 1441(c).

15 DATED: June 5, 2007

JARVIS, FAY & DOPORTO, LLP

16  
17 By: 

18 Benjamin P. Fay  
19 Attorneys for Respondent and Defendant  
20 CITY OF BRENTWOOD

21 J:\Clients\137 [City of Brentwood]\006 [Bailey Neff]\Plead\Notice of Removal of Action (Federal Court).wpd  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT A**

DANIEL A. MULLER /CA SB # 169935  
MORGAN MILLER BLAIR, A LAW CORPORATION  
1331 N. California Blvd., Suite 200  
Walnut Creek, CA 94596-4544  
Telephone: (925) 937-3600  
Facsimile: (925) 943-1106  
dmuller@mmblaw.com

Attorneys for Petitioners and Plaintiffs  
D. BAILEY NEFF, and MINNESOTA RENTALS, INC.

FILED

2007 JUN -7 P 3:19

RECEIVED  
CLERK OF SUPERIOR COURT

BY \_\_\_\_\_

RECEIVED  
CASE NO. 07-00964  
DEPT. \_\_\_\_\_

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF CONTRA COSTA

SUMMONS ISSUED

D. BAILEY NEFF, MINNESOTA RENTALS,  
INC.,

Petitioners/Plaintiffs,

v.

CITY OF BRENTWOOD, and DOES I-XX,

Respondents/Defendants.

Case No: C-07-00964

VERIFIED PETITION FOR WRIT OF  
MANDATE; COMPLAINT FOR  
INVERSE CONDEMNATION

[Permit Streamlining Act (Govt Code § 65920  
*et seq.*), Subdivision Map Act (Govt Code  
§ 65410 *et seq.*), Planning and Zoning Law  
(Govt Code § 65000 *et seq.*), Brentwood  
Municipal Code, Code of Civil Procedure  
§§ 526, 527, 1085, 1087, 1094.5, California  
and United States Constitutions]

By this Verified Petition and Complaint, petitioners and plaintiffs D. BAILEY NEFF and  
MINNESOTA RENTALS, INC. (collectively, "Petitioners") allege as follows:

I. INTRODUCTION

1. Through this action, Petitioners challenge numerous project-processing delays,  
and certain decisions and conditions made or imposed by the City of Brentwood's officials and  
decision-making bodies (collectively, "City" or "Respondent"). The challenged conduct relates  
to a subdivision application submitted by Petitioners on or about August 8, 2003 and to other  
submittals thereafter. The application and submittals were intended to further Petitioners' effort

MORGAN  
MILLER  
BLAIR,  
A  
LAW  
CORPORATION

VERIFIED PETITION FOR WRIT OF MANDATE; COMPLAINT FOR INVERSE CONDEMNATION

1 to subdivide their property at 1060 Minnesota Avenue, in the City of Brentwood (the "Project").  
2 The conduct being challenged includes unreasonable and illegal delays by City staff, and also  
3 improper decisions made, or conditions imposed, by City's Planning Commission and City  
4 Council. The primary Planning Commission actions in question occurred in October 2006, and  
5 March 2007, and both were appealed by Petitioners to City's City Council. The City Council  
6 considered and decided the appeals in October 2006, and April 2007, respectively. The  
7 aforementioned City actions culminated in an approval of the Project by the City Council on  
8 April 7, 2007, subject to numerous conditions, to which Petitioners strenuously objected.

9       2. By this action, Petitioners seek a writ of mandate setting aside the challenged City  
10 Council approvals and decisions in October 2006 and April 2007 on the grounds that City, by  
11 and through its staff and decision-making bodies (1) abused its discretion by taking the  
12 aforementioned actions without proceeding in the manner required by the Permit Streamlining  
13 Act (Govt Code section 65920 et seq.) ("Streamlining Act"), the Subdivision Map Act (Govt  
14 Code section 65410 et seq.), the State Planning and Zoning Law (Govt Code section 65000 et  
15 seq.), and City's Municipal Code; (2) acted arbitrarily and capriciously in seeking to impose  
16 requirements on Petitioners that were not supported by substantial evidence nor by then-current  
17 City policy, and violated equal protection principles due to their dissimilarity from requirements  
18 imposed on others who were similarly situated; and (3) imposed Project conditions that in other  
19 ways do not comply with relevant Municipal Code, statutory, and state and federal constitutional  
20 requirements. Such writ of mandate would remand the matter to City with directions to comply  
21 with the requirements of the aforementioned statutory, constitutional, and Municipal Code  
22 provisions, in connection with any proposed re-approval of the Project. Alternatively,  
23 Petitioners seek a writ of mandate invalidating and setting aside only the offending conditions of  
24 approval, leaving the approvals otherwise intact, or imposing reasonable substitute conditions  
25 consistent with statutory and constitutional requirements. This action also seeks monetary  
26 damages, in inverse condemnation, for the excessive costs Petitioners have borne due to City's  
27 unreasonable delays and conditions.

MORGAN  
MILLER  
BLAIR,  
A  
LAW  
CORPORATION

1           5.     The true names and capacities of Respondents DOES I-XX, inclusive, are  
 2 unknown to Petitioners who therefore sue said respondents by such fictitious names pursuant to  
 3 Code of Civil Procedure section 474. Petitioners will seek leave of Court to amend this petition  
 4 and complaint when the true names and capacities of said Doe respondents have been  
 5 ascertained.

### 6                                   III.     JURISDICTION AND VENUE

7           6.     The Contra Costa County Superior Court has jurisdiction of the matters alleged  
 8 herein pursuant to Code of Civil Procedure sections 526, 527, 1085, 1087 and 1094.5.

9           7.     Venue is proper pursuant to Code of Civil Procedure sections 393 (b) and 395(a).

10          8.     This Petition and Complaint is timely filed within all applicable statutes of  
 11 limitations, including Government Code sections 65009 and 66499.37, and Code of Civil  
 12 Procedure section 343.

### 13                               IV.     EXHAUSTION OF ADMINISTRATIVE REMEDIES

14          9.     Petitioners have performed all conditions precedent to the filing of this Petition  
 15 and Complaint. As the owners/developers of the Project, Petitioners participated in all phases of  
 16 the administrative process, and repeatedly raised the concerns forming the basis of this Petition  
 17 and Complaint. Thus, Petitioners fully exhausted their administrative remedies.

18          10.    City has taken final agency action with respect to the conduct and conditions of  
 19 approval challenged herein. In its handling of Petitioners' application and submittals, in making  
 20 determinations, and in imposing conditions, such as those at issue in this action, City has a  
 21 mandatory duty to comply with applicable state and federal laws, including, but not limited to,  
 22 the California and United States constitutions, the Streamlining Act, the Subdivision Map Act,  
 23 the State Planning and Zoning Law, and Code of Civil Procedure sections 1085 and 1094.5, and  
 24 to comply with the Municipal Code. Petitioners timely appealed the Planning Commission's  
 25 determinations made in October 2006 to the City Council, and timely appealed the Planning  
 26 Commission's determinations in February 2007 to the City Council. City's actions by the City  
 27 Council in October 2006 and April 2007 are final, and no further administrative remedy exists to  
 28

MORGAN  
MILLER  
BLAIR,  
A  
LAW  
CORPORATION

## II. PARTIES

3. Petitioner D. BAILEY NEFF ("Neff") owns real property approximately 3.7-acres in size, located at 1060 Minnesota Avenue, in the City of Brentwood, Contra Costa County (the "Property"), which is the site of the Project. Neff is the principal/owner of petitioner MINNESOTA RENTALS, INC., which is the designated "developer" of the Project. As the Project owners/developers, Petitioners have a direct interest in ensuring that City complies with State statutes, the California and United States constitutions, and City's Municipal Code in processing the application for, and approving the Project. Petitioners made numerous oral and written objections to City's handling of the Project application after it was submitted in August 2003, and before City's decisions in October 2006, and its improper conditions of approval ultimately imposed in April 2007.

4. Respondent CITY OF BRENTWOOD ("City") is a municipal corporation governed by the general laws of the State of California. Included within City are City's staff, who are responsible for reviewing and processing development applications. Also included is City's Planning Commission, which is an advisory agency, with some decision-making authority, subject to appeal to the City Council, and is responsible for reviewing and approving development applications, and for making determinations on issues relating to such applications. Also included is City's City Council, which is City's legislative body, ultimately responsible for finally reviewing and approving development applications, hearing appeals from Planning Commission decisions, and making other final determinations on behalf of City relating to land use approvals. City's staff are required to, inter alia, timely review and process project applications, and City's Planning Commission and City Council are required to grant, deny or condition project applications. All of these land use functions of City's staff, Planning Commission, and City Council must comply with the aforementioned requirements, including the requirements of the California and United States constitutions, the Streamlining Act, the Subdivision Map Act, the State Planning and Zoning Law, and the Municipal Code, as well as the requirements of Code of Civil Procedure sections 1085 and 1094.5.



1 meaningfully allow Petitioners to cure City's unlawful conduct. Thus, Petitioners possess no  
 2 effective remedy to challenge the conduct at issue in this action other than by means of this  
 3 lawsuit.

#### 4 V. FACTUAL BACKGROUND

5 11. On or about August 8, 2003, Petitioners submitted to City their Project  
 6 application, proposing to subdivide the Property.

7 12. In a letter dated September 19, 2003 - i.e., 42 days after the Project application  
 8 was submitted - City's planning staff sent Petitioners a letter, claiming various items were  
 9 needed to render the Project application complete.

10 13. Under protest, given the untimeliness of City staff's response and the invalidity of  
 11 some of the items requested, Petitioners began complying with City's requests in the September  
 12 19th letter, and made further submittals to City staff.

13 14. Petitioners submitted a revised map soon thereafter. On January 8, 2004 - again,  
 14 beyond 30-days after this submittal - City staff sent Petitioners a hand-written one-page fax,  
 15 stating that the revised map needed to be changed so that no lots front onto Minnesota Avenue,  
 16 and that a number of other items from the September 19, 2003, letter needed to be submitted. No  
 17 specific items were identified beyond this reference.

18 15. Many months later, after encountering further unreasonable delays, in late June  
 19 2005, Petitioners submitted to City staff a revised tentative map, showing 12 proposed lots plus a  
 20 "buffer" parcel along the southern boundary of the Project, and a Residential Growth  
 21 Management Plan ("RGMP") score sheet. By way of a letter in mid-July 2005, Petitioners  
 22 requested a response, asking City staff "would you please advise me as to the status of the items  
 23 submitted and what your schedule is for processing and approval of the application." On July  
 24 21, 2005, another staff person at City provided Petitioners a letter stating that the application had  
 25 been re-assigned to her and it was incomplete. Specifically, it needed to go through City's  
 26 RGMP process, for which a fee of \$2,411 was needed; the southern lots would be subject to  
 27 City's General Plan density transition policy, requiring minimum lot sizes of 20,000 square feet;  
 28



1 and the Project could not keep the parcel's historic, existing access to Minnesota Avenue.

2 16. By a letter of July 25, 2005, Petitioners provided payment of the RGMP fee and a  
3 copy of the previously-submitted RGMP score sheet. Petitioners' letter further stated:

4 "I received your letter of July 21, 2005, and look forward to working with  
5 you on this project. ... [E]nclosed is a copy of a letter dated June 30, 2005,  
6 addressed to [staff] with the 2004 RGMP Score Sheet for [the Project]. [¶] We  
7 believe we have complied with the zoning lot size as designated for SPA L and  
8 the RGMP criteria as stated in your letter. We prepared the RGMP scoring and  
9 look forward to receiving your written review of the submittal based on  
10 development as shown. [¶] Please inform Pulte that their plans will need to be  
11 revised to provide access from Minnesota Avenue to [the Project]. [¶] Peggy  
12 Campbell visited with you on Friday July 22, 2005, and I understand you outlined  
13 a proposed layout. We look forward to receiving a dimensioned drawing of the  
14 proposed layout. [¶] I know you have other projects assigned to you and would  
15 like to establish a schedule for review and approval. With your experience, would  
16 you please outline a tentative schedule that we can work towards [sic]. One item  
17 would be the written review of the RGMP submitted on June 30, 2005, another  
18 item would be the dimensioned drawing suggested to Peggy Campbell on July 22,  
19 2005, another would be a general outline of other meetings and submittals that  
20 may be required."

21 17. On the same date as the aforementioned letter (July 25, 2005) City staff sent a  
22 response, stating in part as follows:

23 "In order to process your request, you must submit an application for  
24 Residential Growth Management allocation. Please review Page 30 of the  
25 enclosed RGMP which details explicitly what you must do in order to complete  
26 an application. A scoresheet prepared by you is not sufficient for us to process  
27 your application. You will need to clearly explain how your project meets or  
28 complies with the allocation evaluation criteria as stated in Item 6 on Page 30 and  
as designated in Pages 8 through 15, in addition to the other listed submittal items.  
At this time we do not have an RGMP application from you; therefore, I am  
returning your check and will accept it once you have submitted the required  
application and submittal items. [¶] On this note, our Engineering Department  
has determined that your access will be provided through the Pulte subdivision,  
not off Minnesota Avenue due to the closeness in proximity to existing and  
planned subdivision entrances. Therefore, as stated in my letter to you dated July  
21, you will need to revise your plans showing your access through their  
subdivision as shown on Pulte's map, a copy of which was given to Ms.  
Campbell. [¶] As I explained to Ms. Campbell, your subdivision map as  
submitted is not in compliance with the City's General Plan due to our density  
transition policy, nor is it in conformance with the adopted land use plan for [SPA  
L]. In order to do this, you will need to place 20,000 square foot lots along your  
southern property line... Until you comply with these requirements, we will be  
unable to process any RGMP application as it would not be in conformance with  
our General Plan...."

29 18. On August 5, 2005, Petitioners again wrote City staff (again enclosing the RGMP  
30 check for \$2,411), stating they understood, based on the meeting with staff on July 29, 2005, in

MORGAN  
MILLER  
BLAIR,  
A  
LAW  
CORPORATION

1 the case of several other project applicants (Pringle/Apricot Way, Taylor/Grant Street, The  
 2 Estates at Prewett Ranch, and Parkside Villas), the City had deemed RGMP score sheets like  
 3 Petitioners' as being fully adequate for RGMP application purposes. Petitioners explained that  
 4 "I have patterned my previous submittal after ... Pringle, Taylor and Prewett Ranch and I believe  
 5 you are requesting a different format patterned after Baca Properties dated November 12, 2004,  
 6 that you gave me on July 29, 2005 even though Baca Properties does not apparently have an  
 7 application on file." Despite Petitioners' concerns and protests about being required to comply  
 8 with inapplicable standards or criteria, Petitioners enclosed (under protest) an RGMP submittal  
 9 patterned after the Baca Properties submittal, stating "I hope we can proceed with this  
 10 submittal." Petitioners requested (again) that they be allowed to retain their long-standing access  
 11 to the Project via Minnesota Avenue, and noted that (for this 12-lot proposal) Petitioners  
 12 intended to comply with the City's density transition policy by the proposed linear "buffer" or  
 13 "transition" parcel containing olive orchards along the southern and eastern boundaries. Finally,  
 14 Petitioners noted "[we] hope that we could meet to discuss any concerns you have rather than  
 15 writing letters back and forth and delaying the approval of the project... [and] look forward to  
 16 receiving an estimated schedule for review and approval of this project as previously requested."

17 19. On August 23, 2005, Petitioners sent a letter to the Mayor and Members of the  
 18 City Council, objecting to City staff's position that Petitioners could not retain historical access  
 19 via Minnesota Avenue. Petitioners also noted as follows:

20 "[our] RGMP application has been delayed unreasonably. There are 3  
 21 submittals, after which, I patterned my RGMP application, which have  
 22 application dates subsequent to [my] application.... [The applications are listed.]  
 23 ... I believe I have been requested to meet a higher standard than my  
 24 contemporary applicants which has acted as a delay in processing [my RGMP  
 25 application]. I have been requested, and complied, to submit a RGMP submittal  
 26 to a higher standard which has delayed the development advancement of [the  
 27 Project]. I believe without this delay the development of [the Project] could be  
 28 presented this evening." Petitioners also noted that "on at least three occasions,  
 the Brentwood Planning Department staff members have suggested [my property]  
 be developed concurrently with the adjacent property to the north,  
 Pulte/Biedermann. There is over 500 lineal feet of common property lines  
 between [the Property] and the Pulte/Biedermann property, which will involve  
 grade elevations. To have either party, Pulte/Biedermann or [me] develop  
 without the other, ignoring common issues and perhaps causing undue hardships  
 that could otherwise be avoided is not in the best interest of either party. I request

1 [my] development be accelerated or the Pulte/Biedermann development be held in  
 2 abeyance until both can be presented concurrently. I have twice requested, by  
 3 correspondence, to meet with the Brentwood Planning Department since learning  
 4 that access to [the Project] was safe and have not received a reply concerning my  
 5 requests."

6 20. On August 30, 2005, staff sent Petitioners a letter stating they "determined that  
 7 we will not be able to process your application further as the map you submitted is not in  
 8 conformance with the zoning and general plan designations for the property. As I mentioned to  
 9 you [previously] you will need to place 20,000 square foot lots along your southern property  
 10 line... The 20,000 square foot olive orchard you are proposing does not meet the intent of the  
 11 density transition policy; i.e., placing minimum 20,000 square foot residential lots abutting  
 12 existing Ranchette Estate lots. [¶] In addition, as also mentioned in [staff's] letter of July 25,  
 13 you will need to submit a plan which shows your entrance ... through the Pulte subdivision to  
 14 your north."

15 21. On September 2, 2005, Petitioners sent City staff another letter, enclosing (under  
 16 protest) copies of the proposed tentative subdivision map and the written narrative RGMP style  
 17 staff had requested. Petitioners noted they "would like to restate... that you advise Pulte to  
 18 revise their plan so that [the Project] can be [accessed] from Minnesota Avenue. We feel that if  
 19 Pulte builds their project as submitted it would potentially cause additional traffic on [the  
 20 Project] causing a safety hazard. At the City Council Meeting of August 23, 2005, it was stated  
 21 that the map accompanying the Pulte RGMP was subject to change and could be changed. [¶] I  
 22 would hope that we could meet to discuss any concerns you have rather than writing letters back  
 23 and forth and delaying the approval of the project. [¶] I look forward to receiving an estimated  
 24 schedule for review and approval of this project as previously requested."

25 22. On September 8, 2005, Petitioners sent City staff a copy of City's letter of  
 26 September 19, 2003, asking staff to provide a similar letter, to describe what Petitioners had to  
 27 submit to ensure the Project application was moving forward. Petitioners noted that "In previous  
 28 correspondence, I have requested a schedule of events. At this time I request this list of items to  
 be completed as well as a schedule to meet specific deadlines as I have requested in the past."

23. On September 13, 2005, Petitioners again wrote to the Mayor and Councilmembers, objecting to then-proposed RGMP amendments, and also expressing great concern over how their application was being (mis)handled. Petitioners asked that the proposed RGMP amendments be re-noticed, to receive adequate public review. As to the Project application process, Petitioners observed:

"Minnesota Rentals, Inc. has submitted the Universal Application on July 29, 2003. [¶] Minnesota Rentals, Inc. RGMP fee of \$2,411 was submitted July 25, 2005. [¶] I have requested meetings on several occasions. The first meeting was requested between April 19 and April 27, 2005, and a meeting was held Friday, May 6, 2005. At this meeting several items were discussed [including] access to Minnesota Avenue and the RGMP but it [was] cut short. I requested we review the RGMP Scoring process but was told one of the planners, who was not initially scheduled to attend the meeting, did not have time to review the RGMP with me and the other planner. [¶] ... [Petitioners enclose and list their letters to the Planning Department, in which they requested a schedule and/or meeting.] ... On September 2, 2005, [staff] agreed to a meeting on the morning of September 9, 2005. This meeting was cancelled because another member of the planning department was in meetings all day. The meeting was rescheduled for Thursday, September 15, 2005 at 3:00 p.m. This meeting has been cancelled due to the same member of the planning department having a change in schedule and not being able to attend. [¶] Hopefully a meeting that has now been scheduled for the third time will take place. The meeting is scheduled for September 15, 2005, at 10:00 a.m. and is the first meeting granted by the Planning Department after the initial submittals and requests for a meeting, as requested in the letters above spanning a period of two and one half months."

24. Petitioners' letter also (1) asks that City staff be required to meet with someone requesting a meeting within 7 calendar days of the request, (2) objects to the impending changes to the rules with which Petitioners must comply, based on reasonableness and fairness, in light of the delays Petitioners have experienced in getting staff's time and attention on his longstanding application, and (3) observes that City staff appear to have been implementing parts of the proposed amendments (as to Petitioners' application) despite the amendments' as-yet unapproved status and inherently prospective application.

25. On September 15, 2005, Petitioners submitted yet another RGMP scoring package, this time for the 8-lot proposal.

26. On September 20, 2005, Petitioners submitted to the Mayor and Councilmembers copies of 162 signatures in favor of granting access to the Project via Minnesota Avenue.



1       27. On September 22, 2005, Petitioners submitted to City staff the addressed, stamped  
2 envelopes for giving notice to property owners within 300 feet of the Project. Petitioners also  
3 reference the 162 signatures in favor of access to the Project via Minnesota Avenue, and ask for  
4 the signing individuals to receive notice of hearings on the Project.

5       28. On September 30, 2005, Petitioners sent City staff copies of the tentative  
6 subdivision map, and noted that they would provide the narrative RGMP as staff had requested  
7 on Monday October 3, 2005, as per their discussion (and under protest). Petitioners also restated  
8 their request that Pulte be advised to revise their plan, so that access to the Project can be made  
9 via Minnesota Avenue. On October 3, 2005, Petitioners submitted the RGMP narrative  
10 information.

11       29. A year later, in September 2006, after encountering further problems caused by  
12 City staff in moving the Project application forward, Petitioners filed an "appeal" with City,  
13 requesting the Planning Commission to review the determinations of City's staff relating to the  
14 completeness of Petitioners' application. The appeal stated, inter alia, "The [City] has not  
15 complied with Government Code 65943(a) and (b) by responding in writing within the 30 day  
16 period. [¶] We request [City to] approve the application of [Petitioners for the Project] under  
17 California Government Code 65943(b)... 'the application together with the submitted materials  
18 shall be deemed complete for purposes of this chapter.'"

19       30. The Planning Commission hearing on Petitioners' appeal occurred on October 3,  
20 2006. The staff report for the Planning Commission hearing admits the Streamlining Act  
21 requires that once a formal application has been received, City must respond to the applicant as  
22 to the completeness of their application within 30 days. The staff report states that staff believes  
23 "Since the filing fees were not submitted with the universal application for this project as  
24 required in accordance with the City's adopted subdivision ordinance, it is the City's position  
25 that no formal application exists at this time." Petitioners attended the October 3rd hearing and  
26 presented oral argument and written submittals. The Planning Commission rejected Petitioners'  
27 appeal.

MORGAN  
MILLER  
BLAIR,  
A  
LAW  
CORPORATION

28

10

1           31.     Petitioners timely appealed the Planning Commission's determination to the City  
 2 Council, which heard the appeal at its meeting of October 24, 2006. The staff report for the City  
 3 Council's October 24th hearing stated, as to the Planning Commission's decision on October  
 4 3rd, "It was the position of the Commission that since the required fees had not been paid for  
 5 processing the application, no formal application existed." The staff report further acknowledges  
 6 that staff first responded to Petitioners' application 42 days after receipt of the application form.  
 7 It explains that, despite the fees having been unpaid, "[in] a good faith effort, anticipating that  
 8 the fees would be forthcoming, staff has been continually working with [Petitioners] over the  
 9 past three years to assist [them] in getting the required information submitted in order to  
 10 complete the application. Staff has attempted to be prompt in their responses to submittal items  
 11 and inform [Petitioners] of the items still required." The report further noted that "In order to  
 12 alleviate this situation from occurring in the future, [City] has initiated a policy that no  
 13 application forms are to be accepted without the required processing fees." After the  
 14 presentation of the matter by City staff, and Petitioners' submittals and oral presentation, the City  
 15 Council denied Petitioners' appeal.

16           32.     Thereafter, Petitioners paid the requested filing fees and began negotiating with  
 17 City staff (all under protest) to bring the Project application to hearing, for approval by the  
 18 Planning Commission and City Council.

19           33.     The Planning Commission considered the Project at its meeting of March 6, 2007.  
 20 In their submittals and oral presentations at the hearing, Petitioners recited various grounds why  
 21 many of the proposed conditions sought by staff were inappropriate and illegal, including that  
 22 the Planning Commission exercise its discretion in a fair manner, to correct what Petitioners  
 23 viewed as inappropriate restrictions and design standards, which they believed (a) other  
 24 applicants have not been required to follow, or (b) should not be applied to this Project for timing  
 25 reasons - i.e., because they would not have applied if it were not for City's unreasonable  
 26 processing delays. The Planning Commission approved the Project and imposed staff's  
 27 proposed conditions despite Petitioners' objections.





**SECOND CAUSE OF ACTION**

**(Violations of Subdivision Map Act, Planning and Zoning Law, Municipal Code)**

41. Petitioners hereby incorporate by reference the allegations contained in Paragraphs 1 through 40, inclusive.

42. Various statutory and related provisions, including but not limited to City's Municipal Code and the Subdivision Map Act, provide that cities' fees for reviewing map applications are not "due" until the application is filed with the secretary or clerk of the advisory agency. Thus Petitioners' application fees were not "due" at the time of filing the application with City staff.

43. Also, statutory provisions prohibit cities from imposing requirements that are merely proposed and not yet formally adopted.

44. City's actions, including requiring Petitioners' fees to be paid upon submittal of the map application to City's staff, and seeking to impose RGMP criteria and Affordable Housing Program criteria that were not yet formally adopted at the time Petitioners were seeking to comply with such requirements, were an abuse of discretion, and contrary to law.

WHEREFORE, Petitioners pray for judgment as hereinafter set forth.

**THIRD CAUSE OF ACTION**

**(Violations of CCP §§ 1094.5, 1085)**

45. Petitioners hereby incorporate by reference the allegations contained in Paragraphs 1 through 44, inclusive.

46. Petitioners allege that no substantial evidence has been provided to support the challenged City conditions of approval. For example, as to City's condition prohibiting left-turn access into and out of the Project, City admits it has no formal or informal policy governing the issue and has provided no substantial evidence supporting the unfair condition. Similarly, there is no substantial evidence supporting City's condition requiring submission by Petitioners of a Phase II soil contamination analysis.

WHEREFORE, Petitioners pray for judgment as hereinafter set forth.

MORGAN  
MILLER  
BLAIR,  
A  
LAW  
CORPORATION

**FOURTH CAUSE OF ACTION**

**(Violation of California and United States Constitutions)**

47. Petitioners hereby incorporate by reference the allegations contained in Paragraphs 1 through 46, inclusive.

48. With regard to City's conduct in unreasonably delaying Petitioners' application and submittals in violation of the Streamlining Act and other relevant statutory and similar provisions, and its imposition of conditions of approval seeking exactions beyond what could reasonably have been demanded, for which City has provided no sufficient legal "nexus" for requiring such exactions or fees, Petitioners have suffered significant delay and monetary damages which constitute an unlawful "taking" of Petitioners' property rights without just compensation.

49. Similarly, City's imposition of conditions on Petitioners that seek to impose standards not imposed on other similarly-situated applicants fails to comport with constitutional Equal Protection requirements (e.g., City's conduct regarding Petitioners' RGMP and Affordable Housing Program compliance, and City's condition prohibiting left-turn access), and such impositions of unfair conditions has likewise caused Petitioner delay and monetary damages.

WHEREFORE, Petitioners pray for judgment as hereinafter set forth.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioners pray for the following relief:

1. For an order staying the conditions of the Project's approval and preliminary and permanent injunctions restraining City from taking any action to impose the challenged Project conditions pending a decision on the merits;

2. For this Court's judgment and peremptory writ of mandate directing:

- a. City to vacate and set aside the challenged conditions of Project approval;
- b. City to impose, in any subsequent action taken to approve the Project, conditions that otherwise comply with the Streamlining Act and all other laws, rules and regulations;

MORGAN  
MILLER  
BLAIR,  
A  
LAW  
CORPORATION

1           3.     For damages under the California and United States constitutions' "takings" and  
2 "equal protection" doctrines.

3           4.     For attorneys' fees under Code of Civil Procedure sections 1036 and 1021.5;

4           5.     For costs of suit herein; and

5           6.     For such other and further relief as the Court deems just and proper.

6  
7 DATED: May 7, 2007

MORGAN MILLER BLAIR, A LAW CORPORATION

8  
9 By: 

10 DANIEL A. MULLER  
11 Attorneys for Petitioners  
12 D. BAILEY NEFF, and MINNESOTA  
13 RENTALS, INC.  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

MORGAN  
MILLER  
BLAIR,  
A  
LAW  
CORPORATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**VERIFICATION**

I, D. BAILEY NEFF, declare:

I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE and know the contents thereof. The same is true of my own knowledge, except for those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 7, 2007, in Walnut Creek California.

  
D. BAILEY NEFF

MORGAN  
MILLER  
BLAIR,  
A  
LAW  
CORPORATION

# **EXHIBIT B**

**SUMMONS**  
**(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

**CITY OF BRENTWOOD, AND DOES I-XX**

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

**D. BAILEY NEFF, MINNESOTA RENTALS**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**FILED**

2007 MAY -7 P 2:19

K. [Signature]

BY: [Signature] Deputy Clerk

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

**Tiene 30 DÍAS DE CALENDARIO** después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:  
(El nombre y dirección de la corte es):

Superior Court of Contra Costa County  
Main Courthouse Building  
725 Court Street, Martinez

CASE NUMBER  
(Número del Caso): **07-00964**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Daniel A. Muller  
Morgan Miller Blair  
1331 N. California Boulevard, Suite 200  
Walnut Creek, CA 94596

(925) 937-3600

(925) 943-1106

**S. HAREBRECHT**

DATE:

(Fecha)

**MAY - 7 2007**

Clerk, by \_\_\_\_\_

Secretario

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

[SEAL]

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☒ other (specify): **A municipal corporation**

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

Page 1 of 1